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Counsel for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

2-WAY COMPUTING, INC. a Nevada
corporation,

Plaintiff,

v.

SPRINT SOLUTIONS, INC., a Delaware
corporation; NEXTEL FINANCE COMPANY,
a Delaware corporation; SPRINT UNITED
MANAGEMENT COMPANY, a Kansas
corporation; NEXTEL OF CALIFORNIA, INC.,
a Delaware corporation; NEXTEL BOOST OF
CALIFORNIA, LLC, a Delaware limited
liability company, and NEXTEL
COMMUNICATIONS, INC., a Delaware
corporation,

Defendants.

AND RELATED COUNTERCLAIM

Case No. 2:11-cv-00012-JCM-PAL

**DEFENDANTS' UNOPPOSED
MOTION FOR LEAVE TO FILE
UNDER SEAL**

Pursuant to Local Rule 10-5 and Paragraph 9 of the Stipulated Protective Order, Dkt. 39, Defendants Sprint Solutions, Inc., Nextel Finance Company, Sprint United Management Company, Nextel of California, Inc., Nextel Boost of California, LLC, and Nextel Communications, Inc. (collectively, “Sprint”) hereby request that portions of Exhibits C-H, and J to Defendants’ Motion to Preclude Michele M. Riley’s Testimony Due to Improper Date of Hypothetical Negotiation, which will be electronically filed under seal contemporaneously with this request, be sealed by this Honorable Court.. This Motion for Leave is based on the following Memorandum of Points and Authorities, the papers and pleadings on file, and any oral argument the Court may entertain. Additionally, counsel for Sprint has conferred with counsel for Plaintiff who indicated that the Plaintiff will not oppose the current Motion.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On May 20, 2011, the Court entered the parties’ Stipulated Protective Order. *See* Dkt. 39. On May 24, 2012, the Court entered a Stipulation for Amendment to Stipulated Protective Order. *See* Dkt. 99. The Stipulated Protective Order allowed for the production of documents and information that contain technical or business information of a competitive significance. Dkt. 39 at ¶6. The Stipulated Protective Order also protected non-parties that provided confidential documents and/or information in the case. *Id.* at ¶15. Under the protective order, the parties, as well as non-parties such as Motorola Mobility, Motorola Solutions, and Qualcomm, produced documents, provided information during discovery, and permitted the parties to produce information and documents subject to confidentiality restrictions. Much of this information was designated as “Confidential” in accordance with the provisions in the Stipulated Protective Order as the information involved proprietary technical information with respect to the iDEN technology at issue.

Previously in this matter, Sprint filed two Motions for Summary Judgment and replies in support of those Motions. Both of those Motions involved materials that either the parties, or non-parties, deemed “Confidential” under the Stipulated Protective Order, including

1 materials concerning how iDEN, and devices that use iDEN, operate. Thus, under paragraph
2 9 of the Stipulated Protective Order, Sprint filed a motion to seal certain materials involved in
3 those Motions for Summary Judgment illustrating that “compelling reasons” existed for such
4 materials to remain under seal. *See* Dkts. 140, 156. The Court granted those Motions. *See*
5 Dkts. 157, 159. In granting those Motions to Seal, the Court found that “Defendants have
6 stated compelling reasons for maintaining the confidentiality of documents filed in
7 connection with their Motions for Summary Judgment.” Dkt. 157 at 2. *See also* Dkt. 159 at
8 1. Similarly, in granting prior Motions to Seal in conjunction with previous motions *in*
9 *limine*, the Court found that the expert report of Michele Riley contains confidential financial
10 information, and that good cause was shown to seal such information. Dkt. 212 at 2-3.

11 **II. LEGAL ARGUMENT AND ANALYSIS**

12 The documents filed under seal should remain sealed because they contain
13 confidential information and trade secrets regarding the technology at issue. In the case of
14 dispositive motions, in which similar, if not the same, materials were deemed to remain under
15 seal by this Court, *see* Dkts. 157, 159, “compelling reasons” must be shown in order to seal
16 the records. *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006).
17 As described above, the Court found that the “compelling reasons” test was met to maintain
18 under seal documents relating to the iDEN technology at issue.

19 The information Sprint seeks to maintain under seal here meets the “good cause” and
20 “compelling reasons” test. Documents relating to the development and operation of iDEN are
21 clearly proprietary and subject to protection. Another district court, in conjunction with a
22 theft of trade secrets case involving documents concerning iDEN technology, made specific
23 findings of fact that the iDEN technology is proprietary and not readily available to the
24 public. *See U.S. v. Hanjuan Jin*, 833 F. Supp. 2d 977, 982, 991 (N.D. Ill. 2012) (“iDEN is a
25 proprietary standard for cellular telecommunications technology developed by Motorola
26 [and] is not publicly accessible.”). Maintaining the confidentiality of such technology is
27 essential to not only third parties that developed the technology such as Motorola Solutions
28 and Motorola Mobility, but also the companies that have contracted with these companies to

1 use the technology and have agreed to maintain its confidentiality, such as Sprint.¹ In fact,
2 the Court filed its Order on the Motion for Summary Judgment involving the iDEN
3 technology at issue under seal. *See* Dkt. 160.

4 The redactions to the exhibits to Defendants' Motion to Preclude Michele M. Riley's
5 Testimony Due to Improper Date of Hypothetical Negotiation relate to (1) the functionality of
6 the proprietary iDEN technology, how iDEN devices that use such technology operate, and
7 the development of the iDEN technology, and thus should be maintained under seal, and (2)
8 competitive financial information. The information has been designated as "Confidential"
9 under the Stipulated Protective Order because the producing party considers the information
10 to be proprietary and subject to protection. The Court's prior orders with respect to the
11 Motions to Seal in conjunction with the Motions for Summary Judgment and previous
12 motions *in limine*, *see, e.g.*, Dkt. 157, 159, 212, as well as the Order from the Northern
13 District of Illinois discussed above, illustrate that Sprint has made the requisite particularized
14 showing of good cause with respect to these documents.

15 Due to the confidential, proprietary, and private nature of these documents and
16 information, public disclosure could result in improper use and could put not only Defendant
17 Sprint, but also non-parties Motorola Mobility, LLC and Motorola Solutions, Inc. at a
18 competitive disadvantage in the marketplace. Furthermore, the public has little to no interest
19 in these documents and information in the context of this patent litigation matter brought by a
20 non-practicing entity. Considering the information at issue, there is comparatively little value
21 to the general public in terms of enhancing its "understanding of the judicial process." *See*
22 *Kamakana*, 447 F.3d at 1179. Simply put, there is no harm to the public if they do not have
23 access to the information Sprint seeks to seal. Therefore, this Court should enter an order to
24 seal the documents and information and not place it on the Court's docket.

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27
28 ¹ The agreements with these companies contain non-disclosure and confidentiality obligations.

1 **III. CONCLUSION**

2 Because certain exhibits to Defendants' Motion to Preclude Michele M. Riley's
3 Testimony Due to Improper Date of Hypothetical Negotiation contain confidential
4 information, and Plaintiff does not oppose the current Motion, Sprint respectfully requests
5 that the Court enter an Order that these materials remain sealed.

6 Dated: July 25, 2015

Respectfully submitted,

7 **KILPATRICK TOWNSEND &**
8 **STOCKTON LLP**

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Counsel for Defendants
Sprint Solutions, Inc., Nextel Finance
Company, Sprint United Management
Company, Nextel of California, Inc., Nextel
Boost of California, LLC, and Nextel
Communications, Inc.

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years. On this date, I caused to be served a true and correct copy of the foregoing **DEFENDANTS' UNOPPOSED MOTION FOR LEAVE TO FILE UNDER SEAL** by the method indicated:

XXX

by the Court's CM/ECF Program

by U. S. Mail

by Facsimile Transmission

by Electronic Mail

by Federal Express

by Hand Delivery

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***Counsel for Plaintiff
2-Way Computing, Inc.***

DATED: July 25, 2015

s/Christopher Schenck
Christopher Schenck (*Pro Hac Vice*)

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Defendants.

AND RELATED COUNTERCLAIM

Case No. 2:11-cv-00012-JCM-PAL

**[PROPOSED] ORDER GRANTING
 DEFENDANTS' UNOPPOSED MOTION
 FOR LEAVE TO FILE UNDER SEAL**

1 The Court, having reviewed Defendants' Unopposed Motion for Leave to File Under Seal
2 and good cause appearing, hereby ORDERS that the following documents can be filed under seal:

3 1. Exhibits C-H and J to Defendants' Motion to Preclude Michele M. Riley's
4 Testimony Due to Improper Date of Hypothetical Negotiation.

5
6 DATED this 19th day of August, 2015

7 
8 THE HONORABLE PEGGY A. LEEN
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